IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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Criminal Appeal No. 307-SB of 1999

Date of decision: **January 24, 2008**

Gurmukh Singh ... **Appellant**

Versus

State of Punjab ... **Respondent**

...

Present: Mr. Bipan Ghai, Advocate
for the appellant.

Mr. K. S. Pannu, AAG Punjab
for the respondent-State.

...

CORAM: HON'BLE MR. JUSTICE HARBANS LAL

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HARBANS LAL, J

This appeal is directed against the judgment/order of sentence dated 10.5.1995 rendered by the Court of learned Additional Sessions Judge, Ferozepur, whereby he convicted and sentenced the accused to undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,00,000/- and in default of the same, to further undergo rigorous imprisonment for three months under Section 15 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (for brevity, 'the Act').

As set up by the prosecution, on 21.9.1992 SI Tara Singh, along with other police officials, was going in a Police Canter for patrolling.

When the police party reached the Kacha path leading to Village Dharam Singh Wala, the accused appeared from the side of Village Dharam Singh Wala on the cycle. He fell down from the cycle. he was apprehended. There was a gunny bag on the carrier of his cycle. The above mentioned Sub Inspector asked the accused to tell whether he wanted to be searched in the presence of a Gazetted Police Officer or a Magistrate. He offered to be searched by the Sub Inspector. The consent memo. Ex. PB was prepared which was attested by Iqbal Singh and Shivdev Singh, who were called from Village Killi Gandhara. On search of the gunny bag, poppy husk was recovered. When weighed, the same came to 40 Kg. and 100 grams. 100 grams of poppy husk was drawn to serve as sample. Thereafter the sample and the gunny bag containing the residue were converted into separate parcels and sealed with seal TS and seized vide Memo. Ex. PC along with cycle, Ex. P-2. As a result of personal search of the accused, currency notes worth Rs.108/- were recovered, which along with a wrist watch, were taken into possession vide Memo. Ex. PD. Ruqa, Ex. PE was sent to the Police Station, where on its basis, formal FIR, Ex. PE/1 was recorded. On return to the Police Station, the Sub Inspector produced the accused along with the case property before the S.H.O. Avtar Singh, who sealed the case property with his own seal AS and took the same into possession vide Memo. Ex. PF. On receipt of Chemical Examiner's Report and after completion of investigation, the charge sheet was laid in the Court for trial of the accused.

The accused was charged under Section 15 of the Act, to which he did not plead guilty and claimed trial.

To bring home guilt against the accused, the prosecution has examined Dr. Ajit Singh PW-1, SI Tara Singh PW-2, Inspector Avtar Singh

PW-3, Constable Sat Pal PW-4, Head Constable Balraj Singh PW-5 and closed its evidence.

On close of prosecution evidence, when examined under Section 313 of the Code of Criminal Procedure, the accused denied all the incriminating circumstances appearing in the prosecution evidence against him and pleaded false implication. He has put forth that he had a dispute with one Naranjan Singh at Kot Isekhan, who managed to get him arrested in the police post where he was tortured and to justify the injuries caused to him by the police, he has been involved in a false case. In defence, he examined Shivdev Singh,DW-1 and Iqbal Singh, DW-2 and closed his defence evidence.

After hearing the learned Additional Public Prosecutor for the State, the learned defence counsel and examining the evidence, the learned trial Court convicted and sentenced the accused as noticed at the outset.

Feeling aggrieved with the judgment/order of sentence dated 10.5.1995, the accused has preferred this appeal.

I have heard Mr. Bipan Ghai, Advocate, counsel for the appellant as well as Mr. K. S. Pannu, learned Assistant Advocate General, Punjab, for the State.

Mr. Bipan Ghai, Advocate, appearing on behalf of the appellant, urged with great eloquence that it is in the cross-examination of SI Tara Singh PW-2 (Investigator) that Iqbal Singh and Shivdev Singh, independent witnesses were called from Village Killa Gandhara to join investigation. In the same vein, he has testified that the seal after use was handed over to Head Constable Balraj Singh. He further contended that the prosecution has not assigned any reason for entrusting the seal after use to a

police official in the presence of two independent witnesses and further as emanates from the prosecution evidence, the C.F.S.L Form was neither prepared at the spot nor deposited in the Malkhana. In these circumstances, the possibility of the contents of the sample being tampered with, cannot be ruled out.

To overcome these submissions, Mr. K. S. Pannu, learned Assistant Advocate General, Punjab, submitted that as per Ex. PG, report of Chemical Examiner, the seal of the sample tallied with the specimen seal impression, which obviously rules out the possibility of tampering with the contents of the sample.

This contention does not find favour with me. Firstly, it is own case of the prosecution that Iqbal Singh and Shivdev Singh, independent witnesses were called from Village Killi Gandhara to join investigation. If they were present at the time of alleged recovery, the seal was required to be entrusted to either of them whereas the same was given to Head Constable Balraj Singh. Further, there is nothing on the record to show that the C.F.S.L Form was prepared at the place of recovery and the same was deposited in the Malkhana. In such a state of affairs, there could be every possibility of the contents of the sample being tampered with.

As the contents of the alleged Consent Memo. Ex. PB proceed, the accused Gurmukh Singh had expressed that he did not want his search to be carried out before a Magistrate or a Gazetted Police Officer. This document is absolutely silent about the fact that the accused was informed about his right to be searched before a Gazetted Officer or a Magistrate. Further, the reasonable interpretation which can be put on the contents of this document is that it is a case of partial offer as the word 'Gazetted Police

Officer' has been mentioned in it. Thus, this document spells out a flagrant violation of the mandatory provisions of Section 50 of the Act.

In view of the above discussion, this appeal succeeds and is accepted. Sequelly, the impugned judgment/order of sentence are hereby set aside and the appellant is acquitted of the charged offence. The bail bonds shall stand discharged.

(HARBANS LAL)
JUDGE

January 24, 2008

RS

Whether to be referred to the Reporter ? Yes/No